THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.20260 of 2006

27.9.2006

Between:
M/s.Abhinandana Housing (P) Ltd., Punjagutta, Hydeabad
Represented by its Chairman Sri D.V.Nageswara Rao
... Petitioner

AND
The Principal Secretary to Government of Andhra Pradesh,
Reenue Department, Hyderabad
And another
...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.20260 of 2006

ORDER:

The petitioner is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of construction, housing projects and developmental works. The land admeasuring Acs.17.31 guntas in survey No.67 situated at Adibatla Village of Ibrahimpatnam Mandal in Ranga Reddy District was acquired by the first respondent for a public purpose, namely, extension of Hardware Park by Andhra Pradesh Industrial Infrastructure Corporation (APIIC). The petitioner appears to have purchased number of plots under registered sale deeds in the layout in survey No.67 and the said plots were sold to a number of persons. Therefore, the Chairman of the petitioner made a representation on 15.9.2006 requesting to allot alternate residential plots in lieu of the residential plots in survey No.67, which are acquired. By impugned letter dated 19.9.2006, the second respondent informed the petitioner company that an award has already been passed and that there is no provision under the Land Acquisition Act, 1894 (the Act, for brevity) to allocate alternate land.

Learned Counsel for the petitioner placed strong reliance on Section 31(3) of the Act to contend that discretion is vested in the respondent to allot alternate land and that the second respondent failed to exercise such discretion in a proper manner. He placed strong reliance on the judgments of Supreme Court in **Jaipur Development Authority v Radhey Shyam**[1] and **Secy., Jaipur Development Authority v Daulat Mal Jain**[2]. **Per contra**, the learned Assistant Government Pleader for Revenue (Land Acquisition) placed reliance on the decision of the Supreme Court in **Jage Ram and others v Union of India**[3] and a recent unreported judgment of this Court in **Rock View Enclave Grey Hounds Employees Mutually Aided Housing Society Ltd., v The Secretary, Government of**

A.P.,[4] to contend that the Act does not contemplate allotment of alternate land to the owner of the land and that the award passed by the Land Acquisition Officer (LAO) granting compensation is considered to take care of all aspects of the damage suffered by the owner of the land by reason of the acquisition.

After completion of the mandatory requirement of publishing a notification under Section 4(1) and declaration under Section 6(1) of the Act, the LAO has to enquire into the market value of the land and pass an award regarding the true area of the land, the amount which in the opinion of LAO should be determined as payable and if necessary – apportionment of said amount among all the persons interested in the land. While passing such an award, the LAO is required to consider various factors. When once an award is passed, it is binding on the Government as well as the owner of the land. Though the owner is given a right to seek a reference to the Civil Court for determination of the market value, in which event, the Civil Court is required to take into consideration the market value of the land at the date of the publication of the notification under Section 4(1) of the Act, the damage sustained by the person interested, and the consequence of the acquisition of the land like compulsion to change the residence/place of business by the owner etc. Apart from that, there is no other provision in the Act which enables the owner of the land to claim allocation of alternate land in lieu of the land acquired.

Section 31(3) of the Act enables the Collector i.e., LAO to make arrangement, in spite of awarding money, with the person having a limited interest in the land either by grant of other land in exchange or grant remission of land revenue of the other land held by the person. The said provision has no application when the owner is awarded compensation and it has only application in relation to a person having limited interest in the land. This is very well settled. In **Radhey Syam** (supra), the Supreme Court considered the scope of Section 31(1) of the Act and laid down as under.

> A reading of sub-section (4) of Section 31, in our considered view, indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation, it does not empower him to give any land in lieu of compensation. Sub-section (3) expressly gives power "only to allot any other land in exchange". In other words the

> land under acquisition is not liable to be allotted in lieu of compensation except under Section 31(3), that too only to a person having limited interest. If the contention of the learned counsel for the respondents, that while awarding compensation the Collector (Land Acquisition Officer) has a higher power than the limited power given under sub-section (3) of Section 31, it would run counter to the scheme envisaged thereunder and would result in defeating the public purpose.

In **Daulat Mal Jain** (supra) following **Radhe Shyam** (supra), the Supreme Court reiterated the law as under.

> Where, however, the interest of the party is so limited, as in the case of a trustee of a wakf property or a Hindu widow, as to make it extremely difficult, if not impossible, to arrive at an adequate cash estimate of its value or where, from the circumstances of a case, it is impossible to place the parties concerned by cash compensation in the same or nearly the same position as before acquisition, sub-section (3) enables the Collector to arrange to award land (subject to the same limitation of interest) in lieu of cash. In *Radhey Shyam case* the scope of sub-section (3) of Section 31 has been considered and explained in extenso.

Yet again in **Jage Ram** (supra), the Supreme Court held as under.

> The only question raised in these two writ petitions is whether an observation is to be made by this Court to the effect that the petitioners would be entitled to allotment of alternative sites by the Delhi Development Authority. It is true that the lands of the petitioners were acquired for a defence purpose, viz., establishment of Radar. They were duly paid the compensation demanded of. One of the reliefs sought in the writ petitions is that since they have been displaced from their holdings, they need some site for construction of their houses and that, therefore, the Government of India may make an effort to provide them alternative sites. We are aware of the decision rendered by this Court in *State of U.P.* v. *Pista Devi*. But it depends upon the acquisition for which it was made. In that case, acquisition related to planned development of housing scheme by Meerut Development Authority. Therefore, though no scheme was made providing alternative sites to those displaced persons whose lands were acquired and who themselves needed housing accommodations, a direction was given to the Meerut Development Authority to provide alternative sites for their

> housing purpose. Since the acquisition is only for defence purpose and if the request is acceded to, it would create innumerable complications, we are constrained not to accede to forceful persuasive argument addressed by Mr R.P. Gupta, learned counsel for the petitioners… … The writ petitions are accordingly dismissed.

My learned Brother Hon'ble Sri Justice Goda Raghuram in an unreported judgment in **Rock View Enclave** (supra) considered this aspect of the matter and negatived the contention in the following terms.

> Sub-section 3 of Section 31 of the Act inheres a discretion in the Collector, with the sanction of the appropriate Government, of either making an arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable, having regard to the interests of the parties concerned. This is an alternative to the award of monetary compensation for acquisition of the land. The power, authority and discretion to explore the alternative compensatory methods are statutorily conferred on the Collector, with the sanction of the appropriate Government. Since the power is within a spectrum of discretion, no Mandamus can issue that it should be exercised in a particular manner. Since acquisitions for the Outer Ring Road Project are many and involve huge extents of land, the Government is required to evolve a non discriminatory and transparent policy for dealing with all or specified classes of lands acquired, so as to avoid individualized and arbitrary decision. The Government should not approach the exploration of the alternative compensatory methods under Section 31(3) of the Act on a case to case or face to face basis, but should adopt neutral, transparent and non-discriminatory policy. However, no Mandamus can issue to direct that in lieu of the acquisition of the lands of the petitioners, the petitioners must be granted alternative lands.

Further as seen from the impugned letter, the second respondent has already passed award on 23.3.2005 and if the petitioner is aggrieved by the inadequacy of compensation, it has to seek remedy before the Civil Court under Section 18 of the Act. The petitioner cannot seek allocation of alternate land. If such a direction is issued, the same would amount to compelling the Authorities to ignore law or act contrary to law. A Mandamus cannot be issued to the public

Authority in such a manner.

The writ petition is, therefore, dismissed *in limine*. Nocosts.

(**V.V.S.RAO, J**)

September 27, 2006.
YS

---

[1] (1994) 4 SCC 370

[2] (1997) 1 SCC 35

[3] 1996 LACC 173 (SC) = 1995 Supp (4) SCC 615

[4] W.P.No.17271 of 2006 dated 23.8.2006